IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 474 OF 2000

Changunabai Dagadu Jadhav. ....Appellants.
(Orig.Accd.No.1)

Versus

The State of Maharashtra ....Respondent.

Mrs.P. P. Kakade, (appointed), Adv. for the appellant.

Mrs.U.V. Kejriwal, APP for the State.

CORAM: V.G. PALSHIKAR
AND
ANOOP V. MOHTA, JJ.

23.9.2004.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by Additional Sessions Judge, Nashik on 21.11.1994 in Sessions Case No.144 of 1994, the appellants-accused has preferred this appeal on the grounds mentioned in the memo of appeal.

2. With the assistance of learned counsel and the learned Assistant Public Prosecutor we have scrutinized and reappreciated the evidence on the record on the basis of which the learned trial Judge came to the conclusion of conviction.

3. The prosecution story as it emerges from our reappreciation of evidence stated briefly is that P.W. 3 – Kusum lodged a complaint with the police that on the previous night she was called by accused No.1 to see accused No.2 who was having pains in her stomach. Accordingly Kusum went to the house of accused, saw accused No.2 in pains and it was revealed that she was about to deliver a child. She therefore waited for delivery as she is by occupation a midwife. She is a resident of village Barhe/Khadakpada, Tal. Surgana, district Nashik and the accused also reside in the same village in the vicinity of house of the complainant. The complainant then states that around 3.30 in the morning accused No.2 delivered mail child, it was alive and started crying. Accused No.1 therefore took the child in her hands and started twisting his neck and saying that it is an illegitimate child. Intercedes of the complainant not to kill the child were rejected and accused No.1 threw the child on the floor as a result of which the child died and she wanted the complainant to help her throw away the child but the complainant refused and stayed at the premises. She saw accused No.1 burying the victim in a ditch. In the morning the complainant returned to her home, told her mother and sisters about the incident and lodged a complaint in the police station. Investigation was taken up on the basis of this complaint. Accused were arrested and prosecution has examined as many as eight witnesses in support of the case that the accused persons have committed the murder of the child. The learned trial Judge on appreciation of this evidence came to the conclusion that there is no evidence accused No.2 who delivered the child but found accused No.1 guilty of murder and convicted her as aforesaid.

4. In this case the accused was represented by one Mrs.Ranjnadevi Nikam but

she was absent when the matter was called out. We therefore requested Mrs.P.P. Kakade, advocate to assist us in the matter and it was with her assistance on being appointed by us that we scrutinized the record as aforesaid. The State was represented by learned Additional Public Prosecutor Mrs.U.V.Kejriwal.

5. P.W. 1 is the doctor Nishit Vora who conducted post mortem on the deceased child and has opined in unequivocal terms that the death was caused due to dashing. He proves beyond doubt that the death was homicidal.

6. P.W. 2 – Tushar Deshmukh is a panch to the recovery of the dead body. He has proved the panchnama of that body. He is also panch to the recovery of sickle at the instance of accused No.1. This sickle, it will be seen was used for digging the shallow ditch in the house for burying the child. He also is a witness to the seizure of sickle. He denies all the suggestions made in the cross examination and sticks to his statement made in chief.

7. P.W. 3 – Kusum Jadhav is the complainant who has given a detailed account as to how the accused committed murder. He states that he was called by the accused to her house around 8.00 p.m. To see what ails her daughter accused No.2. The witness therefore went to the house and examined Mohanabai accused No.2 and found that she was due to deliver a child. She therefore stayed at the house of the accused awaiting delivery. Around 3.30 in the morning accused No.2 delivered a male child with the help of witness Kusum when the child started crying accused No.1 took child and started to

kill him. The witness requested not to kill the child. But the accused refused the same and killed the child by throwing it on the floor. The accused was brazen enough thereafter to request Kusum to assist her in disposing of dead body. However Kuksum refused to do so and did not go from the place i.e. house of the accused. It was only in the morning that she went to her and told her mother and sisters as to what transpired and went to the police and disclosed the entire episode. This witness also has been cross examined but the witness has given a truthful account of what transpired in her presence. Her presence is natural and cannot be doubted. She was there at the instance of accused No.1 because health of accused No.2 was bad. She has described the manner in which the death was caused, the manner in which the body was sought to be disposed of. The testimony of this witness has been accepted by the learned trial Judge and in our opinion, rightly so.

8. P.W. 4 is Dr.Bhavana Bohra who has proved that the accused No.2 had recently delivered. This only proves that what Kusum stated was a fact.

9. P.W. 5 – Jijabai Sonawane is resident in the vicinity of house of accused and states that around 3.00 in the morning she heard crying of a child and went back to sleep to learn in the morning what transpired in the night at the water tap. The fact that this woman claims to have heard the child crying substantiates the statement made by P.W. 3 that immediately on delivery child started crying. P.W. 6 – Kalavati Jadhav is the sister of P.W. 3 Kusum and she discloses in the Court that Kusum had immediately on coming from house of the accused told her that accused No.2 gave birth to a male child and

accused No.1 killed the child. She has therefore the testimony to immediate disclosure of what transpired in the night as deposed by P.W. 3. P.W. 3 states that she told everything to her sister and P.W. 6, the sister tells that yes the entire incident was narrated to them by Kusum around 6.30 in the morning. There is therefore adequate corroboration coming from this witness in so far as the eye witness account of Kusum is concerned. P.W. 7 – Gangadhar Choudhari is the investigating officer who has proved the necessary documents and recovery on the basis of which the trial Judge has convicted the accused.

10. In our opinion, there is no reason to interfere with the order of conviction as recorded by the learned trial Judge as the evidence is truthful. It is duly corroborated on material particulars. There is recovery of sickle, there is eye witness account of P.W. 3 Kusum that the child was killed body throwing on the floor. There is factual recovery of the child from the house of the accused No.1. There is ample evidence on record to show that accused No. 2 did deliver at the time when P.W. 3 says that she delivered a child. In our opinion, therefore, this evidence is more than adequate to sustain the order of conviction of accused No.1 as recorded by the learned trial Judge. In the result therefore appeal fails and is dismissed. The amount quantified as fees payable to each, the learned Prosecutor and the learned Advocate appointed Mrs.P.P. Kakade, is Rs.1000/- for this appeal.